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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/811,014

03/26/2004

David G. Wild

CV0330 NP

9570

26079

7590

10/27/2009

CONVATEC INC.

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SKILLMAN, NJ 08558

EXAMINER

OSTRUP, CLINTON T

ART UNIT

PAPER NUMBER

3771

MAIL DATE

DELIVERY MODE

10/27/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<p align="center">Advisory Action Before the Filing of an Appeal Brief</p>	<p>Application No. 10/811,014</p>	<p>Applicant(s) WILD ET AL.</p>	
	<p>Examiner CLINTON OSTRUP</p>	<p>Art Unit 3771</p>	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 05 October 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-14, 19 and 20.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/Justine R Yu/
Supervisory Patent Examiner, Art Unit 3771

/Clinton Ostrup/
Examiner, Art Unit 3771

Continuation of 3. NOTE: The proposed amendment requires further consideration and/or search, as a gaiter cell, a mid-calf cell, and an upper cell all "adapted to wrap fully around" their respective portions of the limb has not been previously considered and/or searched.

Continuation of 11. does NOT place the application in condition for allowance because: applicants arguments have not been found convincing for the reasons set for the in the final rejection mailed August 4, 2009. Applicant's arguments against the references individually one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Each of the items argued by applicant that Barak is lacking, are found in Taheri and likewise, each of the items argued by applicant that are lacking in Taheri, are found in Barak. For example, applicant argues on page 4, third full paragraph, that from a reading of Barak, one of ordinary skill would believe that it is essential to pressurize the thigh in order to obtain benefit from that device." However, the examiner has relied upon Taheri teaching a lower leg treatment device that lacks a thigh cuff.

Applicant then argues when Barak teaches that it can be used on part of a leg, they mean the part of the leg, including the thigh cuff as shown in figures 1 & 2. The examiner respectfully disagrees; however, the obviousness rejection is based upon what a person of ordinary skill in the art would have considered as "a part of a leg." Anyone, having ordinary skill in the art, reading Barak in view of Taheri, would not conclude that the device of the combined references, with independently operated cuffs could only be functionally used and operated as shown in figures 1 & 2 of Barak. An ordinary skilled artisan would readily recognize that the device taught by Barak could be easily modified to treat the lower limb, as taught by Taheri, with predictable results.

Applicant then argues on page 8, third full paragraph, that Taheri lacks a wearable controller. This feature was taught by Barak in figure 1, part (3) and the examiner specifically pointed to Barak teaching these components. See: Final Rejection mailed 8/4/09, page 4, first full paragraph.

Thus, although applicant continues to argue the references individually, when the rejection is based upon the combination of references, the combination of the references provides nothing more than an elimination of a thigh cuff, of Barak, to obtain a lower leg treatment device, as taught by Taheri.

Regarding applicant's argument that a person of ordinary skill in the art, would not use the device of Barak, on a lower limb because Barak, et al., describes its device as being "suitable for use in reduction of edemas, vascular disorders and the prevention of DVT" (column 2, line 45) and these disorders "generally" have an underlying chronic cause, such as heart failure or diabetes, which affects the whole body and a physician typically would not, in such circumstances, treat an isolated spot on the body, has not been found convincing.

It is unclear how applicants can ignore Barak's teaching that conventional compression devices are known for applying compressive pressure to a patient's limb and these types of devices are used to assist in a large number of medical indications, mainly the prevention of deep vein thrombosis (DVT), vascular disorders, reduction of edemas and the healing of wounds. Moreover, Barak discloses his compression system will be suitable for use not only for severe cases of medical indication relating to the healing of wounds, reduction of edemas, vascular disorders and the prevention of DVT, but also to the mild cases, for whom, until now, the only alternate solution was the use of elastic stocking which are, clinically, inferior form of therapy compared with pneumatic compression systems. See. col. 1, lines 15-25 and col. 2, lines 42-49.

Thus, the combined references clearly teach the device as claimed and the incentive for modifying the device is to treat the portion of the leg in need of treatment, as determined by one having ordinary skill in the art, and since Taheri teaches a lower leg treatment devices consisting of a leg and a foot cuff, such a modification is clearly within the skill of the art. See. col. 1, lines 15-25 and col. 2, lines 42-49.

Therefore, applicant's arguments have not been found convincing and the obviousness rejection has been MAINTAINED.